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8 Attorneys for Defendant
Temujin Labs Inc., a Cayman corporation
9 By Special Appearance

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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN JOSE DIVISION**

14 ARIEL ABITTAN

15 PLAINTIFF,

16 v.

17 LILY CHAO (A/K/A TIFFANY CHEN, A/K/A
YUTING CHEN), DAMIEN DING (A/K/A
DAMIEN LEUNG, A/K/A TAO DING),
18 TEMUJIN LABS INC. (A DELAWARE
CORPORATION), AND TEMUJIN LABS INC.
19 (A CAYMAN CORPORATION),

20 DEFENDANTS,

21 and

22 EIAN LABS INC.,

23 NOMINAL DEFENDANT.
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Case No.: 5:20-CV-09340-NC

**[PROPOSED] ORDER GRANTING
DEFENDANT TEMUJIN LABS INC., A
CAYMAN CORPORATON'S MOTION
TO DISMISS**

Date: December 15, 2021
Time: 1:00 PM
Place: Courtroom 5, 4th Floor
Judge: Hon. Nathanael Cousins

1 The motion of Defendant Temujin Labs Inc., a Cayman corporation (“Temujin Cayman”) to
 2 dismiss Plaintiff’s Complaint came on for hearing before the Court on December 15, 2021. The
 3 parties were represented by their respective counsel of record.

4 After considering the papers submitted by the parties and the arguments of counsel, the Court
 5 finds that:

- 6 1. Plaintiff’s derivative claims purportedly on behalf of Eian Labs Inc. (“Eian”) against
 7 Temujin Cayman fail because plaintiff has failed to adequately plead the statutory
 8 prerequisites of Federal Rule of Civil Procedure 23.1. Specifically, the Complaint is not
 9 verified and plaintiff fails to allege he was a shareholder of Eian.
- 10 2. Each of plaintiff’s claims against Temujin Cayman fails because plaintiff has failed to plead
 11 specific facts raising a reasonable inference that Temujin Cayman is liable for the
 12 misconduct alleged and instead impermissibly conflates Temujin Cayman with other
 13 defendants.
- 14 3. Plaintiff’s claims for violations of 18 U.S.C. §§ 1962(c) and (d) against Temujin Cayman fail
 15 because plaintiff has failed to plead facts, as opposed to conclusions, demonstrating each
 16 primary liability element with respect to Temujin Cayman with the required specificity, and
 17 absent well-pleaded primary liability, there can be no liability for conspiracy under §
 18 1962(d).
- 19 4. Plaintiff’s claim for aiding and abetting breach of fiduciary duty against Temujin Cayman
 20 fails because plaintiff has failed to plead facts, as opposed to conclusions, stating a claim
 21 against Temujin Cayman. Further, plaintiff has failed to meet the heightened pleading
 22 standards of Federal Rule of Civil Procedure 9(b).
- 23 5. Plaintiff’s claim for fraudulent inducement against Temujin Cayman fails because plaintiff
 24 has failed to plead facts, as opposed to conclusions, stating a claim against Temujin Cayman.
 25 Further, plaintiff has failed to meet the heightened pleading standards of Federal Rule of
 26 Civil Procedure 9(b).

6. Plaintiff's claim for fraud against Temujin Cayman fails because plaintiff has failed to plead facts, as opposed to conclusions, stating a claim against Temujin Cayman. Further, plaintiff has failed to meet the heightened pleading standards of Federal Rule of Civil Procedure 9(b).
7. Plaintiff's claims for conversion against Temujin Cayman fail because plaintiff has failed to plead facts, as opposed to conclusions, demonstrating any conduct whatsoever by Temujin Cayman with respect to the supposedly converted property.
8. Plaintiff's claim for unjust enrichment against Temujin Cayman fails because plaintiff has failed to plead an absence of justification for Eian's asset sale or any other value transfer to Temujin Cayman, plaintiff has adequate remedies at law, and under California law, "unjust enrichment is a theory of recovery, not an independent legal claim." *Keirsev v. eBay, Inc.*, 2012 WL 12920765, at *2 (N.D. Cal. Aug. 6, 2012).
9. Plaintiff is not entitled to an accounting from Temujin Cayman under California law because he has failed to state any viable primary claim against Temujin Cayman, whether on behalf of Eian derivatively or against Temujin Cayman directly, and plaintiff has not alleged facts indicating he is a shareholder of Temujin Cayman such that it could owe him fiduciary duties.

Therefore, it is HEREBY ORDERED that (1) Temujin Cayman's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6) is GRANTED, and the Complaint is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

DATED: _____

 The Honorable Nathanael Cousins
 United States Magistrate Judge